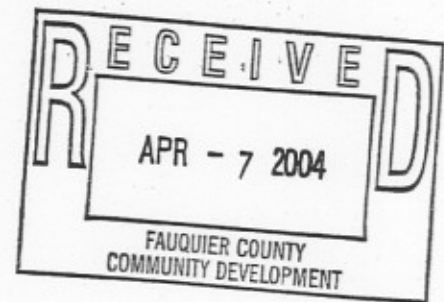




WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC

Alice G. Haase
(703) 330-7400 Ext. 23
ahaase@nm.thelandlawyers.com

April 7, 2004



The Honorable Harry Atherton
Chairman, Fauquier Board of Supervisors
40 Culpeper Street
Warrenton, VA 20186

Re: Special Permit Application and Appeal of Proffer Interpretation
RZ-99-CR-08

Dear Chairman Atherton:

This firm represents Riverside Mulch, Inc. ("Riverside") and the Benjamin C. Gravett Family Limited Partnership (the "Gravett Partnership") in conjunction with Riverside's application for a special permit for a mulch processing facility on property owned by the Gravett Partnership, located on Midland Road. During the application review process, the Zoning Administrator determined that the proposed use is not consistent with the associated proffer statement, and therefore, did not process the application for the Board of Zoning Appeals hearing on April 1, 2004.

On behalf of Riverside and the Gravett Partnership, and pursuant to the Fauquier County Zoning Ordinance, § 13-202(2)(D)(10) (the "Ordinance"), this letter serves as notification of Riverside's and the Partnership's appeal of the above-referenced proffer interpretation.

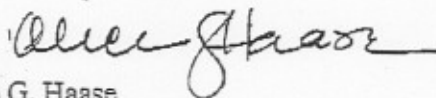
It is the position of the Applicant that the proposed industrial use is consistent with the proffer statement and development plan, and that the ruling is contrary to the applicable standards regarding substantial conformance set forth in the Ordinance, § 13-202(2)(D)(5). The grounds for this position will, to the extent required, be more fully set forth in a transmittal under separate cover.

It is our understanding that this matter will be scheduled as an agenda item with the Board of Supervisors and we look forward to hearing from you in this regard. We have discussed this matter with the County Attorney and Director of Community Development, and would ask that you speak with both about this. Thank you for your attention to this matter and please do not hesitate to contact John Foote or me if you have any questions.

The Honorable Harry Atherton
April 7, 2004
Page 2

Sincerely yours,

WALSH, COLUCCI, LUBELEY,
EMRICH & TERPAK, P.C.



Alice G. Haase

cc: The Honorable Raymond E. Graham
Paul S. McCulla, Esq.
John H. Foote, Esq.
Ben Jones, Esq.
Frederick P. D. Carr
Adam Stump

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RIVERSIDE MULCH, INC.
SPECIAL PERMIT APPLICATION
STATEMENT OF JUSTIFICATION
G.P.I.N. 7819-08-5767
February 19, 2004

INTRODUCTION: The Applicant, Riverside Mulch, Inc., a West Virginia corporation authorized to operate in Virginia ("Riverside"), is the contract purchaser of a parcel of land identified as G.P.I.N. 7819-08-5767 (the "Property"). The parcel contains 29.77 +/- acres, are located in the Cedar Run Magisterial District on Midland Road. Zoned to the Industrial General (I-2) district, the Property falls within the Airport Overlay District and the Midland Village Service District (the latter pursuant to the Fauquier County Comprehensive Plan (Map 6.6.F)).

Riverside proposes to expand its existing mulch business located in Romney, West Virginia, to include a mulch facility in Fauquier County. The I-2 district allows such use by Special Permit. Accordingly, Riverside seeks a Special Permit pursuant to Zoning Ordinance § 3-317(2), for an industrial use located on property in excess of one acre that is not contained entirely within a building or completely screened from view. Also, Riverside seeks a Special Permit pursuant to Zoning Ordinance § 3-312(11) for retail sales in conjunction with its intended use. The general layout of the site is shown on the attached plan prepared by Frederick Ward & Associates, entitled "Proposed Riverside Mulch Site," dated February 13, 2004 (the "Plan").

The Land Use Plan for the Midland Service District identifies this Property for Industrial usage, which is consistent with the proposed use. When the Property was rezoned in 1999, the Owner proffered certain use restrictions, frontage improvements, landscape buffering, wastewater management and construction materials. This proposal is likewise consistent with the proffer statement, which is attached hereto as Exhibit 1.

PROPOSAL: The description of the Applicant's proposal begins with a statement of what it does not do - Riverside does not grind stumps or logs. Rather, Riverside uses only material that has already been ground so that it is about the size of the human fist. Once brought to this site, the product will be delivered to that area marked as "Stage 1" on the Plan, where it will generally age for at least 90 days, although during peak demand times, it may be immediately ground. Otherwise, after the initial aging process, the product is ground and moved to the area marked as "Stage 2" on the Plan. At that point, depending upon the need, the product is either ground again or aged. In all circumstances, upon the second grind process, the product is ready for sale and placed in the area marked for "Stage 3."

Once ready for sale, generally during spring and summer months, the mulch is sold in bulk to nurseries, although some mulch is available for sale to the general public. Typically, the process from delivery to finish takes no more than nine months but the time period may be shortened, dependent upon demand.

As a preventive measure to guard against emissions, Riverside turns the mulch piles every 90 days. During that process, with the routine turning at 90 days or less, the mulch piles emit intermittent periods of steam. However, at no time do the mulch piles reach sufficient temperature to catch on fire, which is a complaint commonly associated with mulch facilities.

The site will be buffered by an existing 75' perimeter boundary that contains existing hardwood trees and Virginia pines as well as a six-foot landscaped berm across the Property frontage and a four-foot berm along a portion of the Property. Additionally, the grinding machinery is fitted with mufflers. Access will be provided from a single entrance on Midland Road, with acceleration and deceleration lanes constructed as proffered and shown on the Plan. The proposed daily hours of operation will be from 7 a.m. to 8 p.m.

The Property is identified within the "priority area" for the proposed Midland Sewer Service, although there are no immediate plans to implement a public sewer system. Therefore, Riverside proposes a private, potable water well and on-site sewage disposal, to be approved by the Fauquier County Health Department. Storm water management, including BMP, will be on-site.

CONCLUSION: Riverside's proposal to locate a mulch facility on Midland Road is consistent with the Comprehensive Plan for the Midland Village Service District, the Airport Overlay District and the I-2 zoning designation. Road improvements and landscaped buffers will mitigate any traffic and noise impacts from the development. Sales tax revenue generated from the business will provide financial benefit to Fauquier County. Therefore, the Applicant requests that this proposal be approved.

04144

APPLICATION FORM

Footnote

FAUQUIER COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
THIRD FLOOR — COURT AND OFFICE BUILDING

40 CULPEPER STREET

WARRENTON, VIRGINIA 20186

(540) 347-8660

FAX (540) 341-3444

PLANNING
(540) 347-8703

COUNTY ENGINEER
COUNTY SOIL SCIENTIST
(540) 347-8660

ZONING ADMINISTRATION
(540) 347-8789

BUILDING
AND ZONING PERMITS
(540) 347-8646
(540) 347-8647
(540) 347-8674
FAX (540) 347-2043

Corrected Letter

March 31, 2004

Ms. Alice G. Haase
Walsh, Colucci, Lubeley, Emrich & Terpak, P.C.
9324 West Street
Suite 300
Manassas, Virginia 20110-5198

Dear Ms. Haase:

Riverside Mulch, Inc. has submitted a special permit application for a mulch facility on the parcel identified by PIN 7819-08-5767-000 to. This parcel is zoned I-2/Industrial and is subject to proffers and a concept development plan approved by the Fauquier County Board of Supervisors when the property was rezoned from RA/Rural Agriculture to I-2/Industrial on December 6, 1999.

The proffers and concept development plan limit the potential use of this property to an industrial park. The proffers state that the use will be consistent with a concept plan submitted with the rezoning. That concept plan, dated July 10, 1999 and prepared by Wiltse & Associates, Inc., shows the parcel being divided into several lots for an industrial park for such uses as warehousing, contractor's yard, research and development and other similar businesses. The concept plan proposed for the mulch use is not consistent with the proffered concept development plan.

Nor does the application for the mulch facility comply with item 5 Initial Construction of the proffer statement dated August 26, 1999, submitted by the Benjamin C. Gravett Family Limited Partnership and approved by the Board. That item states "...initial construction will consist of an office building of brick veneer exterior."

Because the proposed mulch yard does not comply with the concept development plan and written proffers approved by the Board of Supervisors for this site, the proposed use cannot be processed for a special permit and will not be presented to the Board of Zoning Appeals at the April 4, 2004 meeting.

Ms. Alice G. Haase
March 31, 2004
Page 2

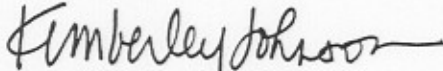
In order to proceed with the application for a mulch facility, the proffer statement and concept plan would need to be amended by the Board of Supervisors through a rezoning request. Please let me know if you would like us to hold the mulch special permit application for potential future processing, or if you would like to withdraw.

Section 15.2-2301 of the Code of Virginia states that any applicant or other person aggrieved by a decision of the zoning administrator made pursuant to the provisions of Section 15.2-2299 may petition the governing body for review of the decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within thirty days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.

Since my earlier letter dated March 25th on this issue was in error regarding the appropriate appeal process, the thirty day time period will start from the date of this corrected letter.

Please feel free to give me a call if you have any questions.

Sincerely,



Kimberley A. Johnson
Zoning Administrator

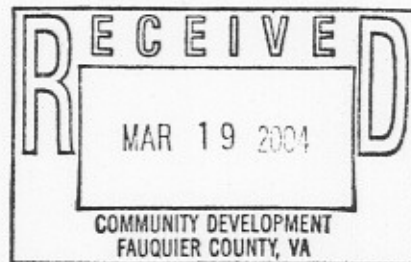
cc: Interpretation File



**WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC**

Alice G. Haase, Esq.
(703) 330-7400 Ext. 23
ahaase@mn.thelandlawyers.com

March 19, 2004



Fred Hodge
Assistant Zoning Administrator
Fauquier County Department for Community Development
Third Floor - Court and Office Building
40 Culpeper Street
Warrenton, VA 20186

Re: Riverside Mulch Special Permit Application

Dear Mr. Hodge:

In response to your request for additional information regarding the above referenced application to the Board of Zoning Appeals, my client has provided the following.

The peak season for the mulch business is that period between the months of February and May. During that time, the grinding operations will be limited to Monday through Saturday between the hours of 6 a.m. and 11 p.m. At all other times, the grinding operation will be limited to Monday through Friday, 8 a.m. to 4 p.m.

Although you did not ask for this information, I report that the Applicant has measured the decibel level of the company's grinding machine to show that 75 feet from the property line, the maximum sound is 88 decibels. However, we anticipate that the grinding machine will be placed farther than 75 feet from the property line. Nonetheless, even at 75-feet, that decibel level falls within that allowed at a nonresidential lot, pursuant to the Fauquier County Zoning Ordinance, § 9-705, Table V. Accordingly, the noise should not be a deterrent to the required hours of operation.

My client also tells me that the company will employ two (2) full-time persons for administrative and yard operations, four (4) full-time employees as drivers, and three temporary workers during the peak season. It is anticipated that the four drivers and three temporary workers will be hired from within Fauquier County.

The site plan prepared by Frederick Ward Associates entitled "Proposed Riverside Mulch Site," dated February 13, 2004, was revised to show the 0.72 acre retail sales area, which represents 2.4% of the 29.7 acre site. The Stage Three area, 3.4 acres, will be utilized for storage prior to its removal to the retail area or off-site locations. The revised site plan will be forwarded under separate cover.

If you have any further questions, please do not hesitate to contact me.

PHONE 703 330 7400 • FAX 703 330 7430 • WWW.THELANDLAWYERS.COM
9324 WEST STREET, SUITE 300 • MANASSAS, VA 20110-5198

ARLINGTON OFFICE 703 528 4700 • LOUDOUN OFFICE 703 737 3633 • PRINCE WILLIAM OFFICE 703 680 4664

Mr. Fred Hodge
March 19, 2004
Page 2 of 2

Sincerely yours,

WALSH, COLUCCI, LUBELEY, EMRICH &
TERPAK, P.C.

Alice G. Haase

cc: Adam Stump
John Orr, P.E.

August 24, 1999
Revision Date: August 26, 1999
Second Revision Date: August 26, 1999

**BENJAMIN C. GRAVETT FAMILY LIMITED PARTNERSHIP
I2 REZONING APPLICATION
PROFFERS**

Benjamin C. Gravett Family Limited Partnership, the contract owner of the property and Applicant in the above-referenced rezoning application (hereinafter "GRAVETT"), hereby proffers that in the event the subject property is rezoned by the Fauquier County Board of Supervisors (hereinafter referred to as the "County") in case number RZ 99-CR-06, to the I2 district in accordance with the uses set forth in the Fauquier County Zoning Ordinance and in these proffers and the Concept Development Plan dated July 10, 1999, prepared by Wiltse & Associates, Inc., and filed with the application (the "Concept Development Plan"), the development of the property shall be in substantial conformance with the following conditions pursuant to Section 15.2-2286 of the 1060 Code of Virginia, as amended, and Article 4, Sections 4-101 through 4-115, inclusive, of the Zoning Ordinance of Fauquier County, Virginia and shall be in accordance with the Zoning Ordinance which is in effect at the time of rezoning.

All of these conditions are voluntarily entered into pursuant to Section 13-202(D) of the Zoning Ordinance of Fauquier County and the relevant sections of the Virginia Code. GRAVETT intends to file a preliminary subdivision plat and/or a site plan for the entire project following the approval of the rezoning applied for, which will provide additional detail, as required by the applicable ordinances of Fauquier County.

LAND USE

Unless modified by this Proffer Statement, the development of the subject property shall be in accordance with the I2 district regulations and the proffers contained herein. The Applicant hereby proffers that the property shall NOT be used for any of the following purposes:

- Any use which requires the employment of poisonous or noxious chemicals or substances, either as a primary ingredient or as a byproduct.

- Any industry which requires the use of a "smokestack" or chimney in excess of 20 feet in height.

- Any heavy industrial uses as listed in Sections 3-317, 5 and Section 5-1703.1 and any industrial use which will exceed any one of the following listed in Section 5-1703.1, paragraph GG:

- a. Consumption of more than 10,000 gallons of water in any one day or more than 150,000 gallons in any consecutive thirty day period excluding facilities for which approval is required under 15.1-456, Code of Virginia, as amended.

- b. Discharge of more than 10,000 gallons of wastewater in any one day or 150,000 gallons in any consecutive thirty day period, excluding facilities for which approval is required under 15.1-456, Code of Virginia, as amended.

- c. Generation of more than an average 100 cubic yards per day of solid waste of any sort in any thirty day period for disposal at a public landfill.

WASTEWATER MANAGEMENT

The Applicant hereby proffers that wastewater will be treated by a alternate system approved by the County Health Department which will be either the "Greenhouse" concept sewage disposal system or a similarly suitable and approved system. Further the Applicant proffers that whichever such alternate system is eventually employed will be designed and constructed so as to serve the entire tract, and appropriate fees will be established and collected from all users so as to provide for necessary professional operation and management for all properties using such system.

3. TREE MANAGEMENT AND PRESERVATION

The Applicant proffers to provide a tree management and preservation plan at the site plan or preliminary plat stage (whichever first occurs) to be prepared by the Applicant's consulting engineer.

4. LIGHTING AND AIRPORT OVERLAY ZONE

The Applicant will comply with the County's then-current lighting ordinances and regulations, as well as all regulations regarding the Airport Overlay Zone.

5. INITIAL CONSTRUCTION

Applicant proffers that its initial construction will consist of an office building of brick veneer exterior.

6. TRAFFIC IMPACTS AND FRONTAGE IMPROVEMENTS

While ultimate traffic impacts are not subject to accurate calculation at this time because the ultimate uses are not yet known, the Applicant proffers such on-site traffic improvements and controls to include acceleration/deceleration lanes, commercial entrances,

ustrial-type internal roadways, and such other improvements as may reasonably be required by VDOT, as and when future uses may dictate, such requirements to be determined in conjunction with those requirements recommended by the "Institute of Traffic Engineers Trip Generation" most current edition.

With respect to off-site transportation improvements, prior to filing of a site plan for any use in excess of 50,000 cumulative square feet of industrial building area, Applicant shall conduct a traffic study, consistent with VDOT methodology, of the Route 28/Route 610 intersection. Should that traffic study determine that said intersection is operating at a "Level of Service" (LOS) of "D" or worse and if VDOT has approved a plan to upgrade said intersection, Applicant shall contribute its proportionate share (defined as Applicant's percent of the total traffic at said intersection) toward the approved improvements to said intersection.

7. LANDSCAPE BUFFERING

In addition to tree preservation to the greatest extent possible, Applicant proffers to utilize tree and landscape buffers and fences including mounds, if appropriate, to effectively screen and buffer visual impacts from highways and adjacent property.

8. STORM WATER MANAGEMENT

Applicant proffers to provide, at site plan or initial subdivision plat stage, a plan for adequate storm water management for the entire tract, including BMPs.

By: 

BENJAMIN GRAVETT FAMILY LIMITED PARTNERSHIP